

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. No. 5:08-CR-00395

UNITED STATES OF AMERICA,

Plaintiff,

v.

DURWOOD JOSEPH FIELDS,

Defendant.

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ORDER

This matter is before the court on the government's motion for return of property (DE #108). The motion notes that, as of the date of filing of the motion, the appeal in this case had been completed and there was no motion pending under 28 U.S.C § 2255 to vacate, set aside, or correct sentence. After the government's motion for return of property was filed, however, petitioner in fact filed a motion a motion under 28 U.S.C. § 2255, which is pending before the court. Accordingly, the court finds it premature to address the motion for return of property, and the court thus DENIES the motion WITHOUT PREJUDICE to re-filing the motion after resolution of the pending motion under 28 U.S.C. § 2255.

SO ORDERED, this the 24th day of October, 2012.



LOUISE W. FLANAGAN
United States District Judge